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IN THE

# Supreme Court of the United States

—

OCTOBER TERM, 1975.

—

No. 75-162.

—

NELSON BUNKER HUNT,

*Petitioner,*

*v.*

COASTAL STATES MARKETING, INC., CLAIMANT OF A CARGO OF PETROLEUM PRODUCTS LADEN ON THE STEAM TANKER HILDA,

*Respondent.*

———

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.**

Respondent, Coastal States Marketing, Inc., respectfully prays that this Honorable Court shall deny the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit in the above matter, and in support of its opposition submits the following.

## REASONS FOR DENYING THE WRIT.

### I. The Decision Below Does Not Contravene *Post v. Jones*, 60 U. S. 150 (1857), or Supplemental Rule D, F. R. C. P.

Contrary to petitioner's assertion, *Post v. Jones* was not an action for the possession of cargo. What was really involved in *Post v. Jones* is disclosed by the opening sentence of this Court's opinion:

> "The libelants, owners of the ship RICHMOND and cargo filed the libel in this case for an adjustment of salvage . . ."

Incidental to the salvage cause of action, this Court invalidated the purported auction sale of a wrecked vessel and her distressed cargo. Thus we have an illustration of the very principle recognized by the decision below: that where a matter (salvage) is clearly within the admiralty jurisdiction, the admiralty court has the incidental power to decide a question of ownership and/or possession.

That is not the situation in the present case. Here the root question is the validity of the action of the Libyan government in nationalizing petitioner's oil concession within the Libyan territorial jurisdiction. There is no way that petitioner can prevail without an adjudication of the invalidity of that action. Certainly the action of a foreign sovereign in nationalizing a natural resource within its boundaries is not within the admiralty jurisdiction of the United States.

Petitioner consistently refers to its cause of action as one for "possession" of cargo. However, it is more than that; fundamentally, petitioner seeks an adjudication of title. This is abundantly clear from the language of the amended complaint (Appendix C-1).

Paragraph 17 of the amended complaint alleges that plaintiffs are "the true and lawful *owners* of all or at least a substantial portion of the said cargo . . ." and that they are entitled to possession of the cargo *"as such owners"*. The first prayer of the complaint is that the Court shall decree that plaintiffs "have full *title* to the said cargo . . ." and that possession should be delivered to plaintiffs "as the true and rightful *owners* thereof" (Appendix C-6; emphasis supplied). This dramatizes that the entire decision turns upon the validity of the action of the Libyan government.

Supplemental Rule D, F. R. C. P. is of no importance and is in no sense contravened by the decision below. This is a purely procedural rule which does not purport either to confer or define jurisdiction. It simply prescribes the mechanics by which certain claims which are substantively within the admiralty jurisdiction may be prosecuted. *Wright & Miller, Federal Practice and Procedure*, Section 3231, Volume 12, Page 282; see also *Silver v. Sloop Silver Cloud*, 259 F. Supp. 187, 189 (S. D. N. Y. 1966).

In this connection it is noteworthy that even Rule D does not encompass the basic issue involved here—namely, title to the cargo in question. Rule D distinguishes between vessel and cargo and provides, *inter alia*, for trying the issue of title to a vessel. But as to cargo, the rule speaks only of possession. It cannot be assumed that this distinction was inadvertent.

Petitioner suggests that no valid distinction exists between vessel and cargo insofar as admiralty jurisdictional considerations are concerned. This is not so. A vessel is irretrievably bound to the sea and its attendant perils and profits. Unless afloat, a vessel and her appurtenances and equipment are no more purposeful than a beached whale.

On the other hand, cargo has only the most transient and fortuitous connection with navigable waters. That it happens to be aboard a vessel at a particular time is of no jurisdictional significance. Calling cargo "maritime property" is a purely invocatory exercise. In all reality there is nothing "maritime" about a cargo of oil. It would be just as unrealistic to call this same oil "highway property" while being transported by truck, or "railroad property" while being carried aboard a tank car. Surely the decision is not furthered by attaching a label —especially one that will not stick.

If petitioner's cause of action were within the admiralty jurisdiction, then presumably the decision would be determined under the principles of the general maritime law. What is the general maritime law as to the validity of the nationalization of terrene property by a foreign sovereign? Merely stating the question demonstrates the incongruity.

**II. Petitioner's Complaint Does Not State a Cause of Action for a Maritime Tort, and Admiralty Jurisdiction Cannot be Sustained on That Basis.**

The Court below clearly pointed out that if any tort was committed, it occurred ashore in Libya when the government of that country nationalized petitioner's oil concession:

> "The act complained of in this case is the unauthorized seizure of plaintiffs' property by the Libyan Government. It cannot be said that the subsequent transfer of the property by Coastal States was a tort which principally occurred on the high seas. The transfer of the oil was a tort only if the Libyan government's action was tortious. Plaintiffs cannot pre-

vail by demonstrating that Coastal States had unlawful possession of the petroleum products while on the high seas unless they can first demonstrate that the Libyan Government's actions were unlawful. In the abduction cases cited by plaintiffs no preliminary showing of an unlawful taking on the land was necessary to sustain liability and the mere showing of a voyage not consented to was sufficient to obtain liability." (Appendix D-4.)

The two cases closest in point hold that there is no admiralty jurisdiction based on maritime tort in analogous situations.

In *American Hawaiian Ventures v. M.V.J. Latuharhary*, 257 F. Supp. 622, 625 (D. N. J., 1966) the Court dealt with a cause of action involving the nationalization of rubber plantations by the government of Indonesia. What was there said is applicable by parallel reasoning to the present case:

"Beyond dispute the present action is overwhelmingly one for conversion on Sumatra proper of non-maritime property, a conversion having no flavor of admiralty whatsoever. The added assertion of incidental seizures of loading vessels, even if not subject to defects discussed below, is insufficient to work some magical conversion of this suit into one in admiralty.

* * *

'Nor is the assertion that some of its present cargo may be rubber which was seized in the alleged conversion some six years ago sufficient to support a maritime lien. The connection between the alleged conversion is too remote from the activities of the vessel to invoke admiralty jurisdiction."

*Schoening v. A Shipment of 102 Jute Bags*, 132 F. Supp. 561 (E. D. Pa., 1955) was a suit in admiralty for conversion of goods allegedly belonging to the libellant. Denying admiralty jurisdiction, the Court said:

> "In resolving this jurisdictional problem it is essential to determine the elements of admiralty jurisdiction as it pertains to torts. In United States v. Matson Navigation Co., 9 Cir., 1953, 201 F. 2d 610, 613, Judge Stephens stated:
>
> > "An essential to the jurisdiction of the admiralty courts over a tort is that it was *committed* in relation to navigable waters. (Emphasis supplied)"
>
> * * *
>
> "But in the instant case, was there a tort either 'committed in relation to navigable waters' or 'arising out of a maritime status or relationship'? We think not. The conversion was complete when the goods were removed from the warehouse in East Greenville, Pennsylvania. Certainly admiralty jurisdiction did not attach at that time; and it cannot do so now, merely because the goods subject to this conversion are shipped by an innocent carrier on navigable waters. A remote connection between the cause of action and activity on navigable waters is not sufficient to invoke admiralty jurisdiction. *Forgione v. United States*, 3 Cir., 1953, 202 F. 2d 249." (at 132 F. Supp. 562).

In urging this Court to hold that admiralty jurisdiction based on maritime tort extends to the present case, petitioner fails to heed the admonition of this Court in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio* 409 U. S. 249, wherein this Court said:

> "Just last Term in Victory Carriers, Inc. v. Law, 404 U. S., at 212, we observed that in determining whether to expand admiralty jurisdiction *'we should proceed with caution. . . .'*." (at 409 U. S. 272; emphasis supplied).

Respondent further submits that no tort, maritime or terrene, is pleaded in petitioner's complaint. In essence, petitioner alleges that it disputes the legal position of the Libyan government, and that it notified various parties, including respondent, of its position. On this basis, petitioner contends that anyone who dealt with the property in a manner inconsistent with petitioner's assertion committed a tort.

No case has been cited, and none has been found supporting the notion that a party who deals with property in a manner inconsistent with the asserted, but unadjudicated legal position espoused by another, thereby becomes a tortfeasor.

However, this underlying issue need not be reached because even if a tort were involved, it was most certainly not a maritime tort. It occurred on land, and subsequent events did not change the situs or nature of the alleged wrong.

No point is seen in discussing the numerous authorities cited by petitioner. To the extent that their distinctions are not immediately apparent, they are dealt with adequately and convincingly in the decisions below. These decisions clearly demonstrate why admiralty jurisdiction cannot be sustained on the basis that the cause of action is itself within the admiralty jurisdiction or is incidental to a cause of action within such jurisdiction, or on the basis of a maritime tort.

## CONCLUSION.

For the reasons set forth above, respondent prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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